

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

1. The petitioner is the divorced father of a minor child. A recent Vermont Family Court order decrees that the child's mother has sole physical custody of the child, subject to the petitioner's right of visitation up to 50 percent of the time.

2. The child's mother lives in Montreal, and the child attended school there. He frequently visits with the petitioner in Vermont.

3. In December 2008 the petitioner applied to the Department for and was granted medical benefits for himself (VHAP) and his son (Dr. Dynasaur). The Department terminated those benefits in May 2009 when it learned that the petitioner did not have physical custody of his son, and that his son was not primarily a resident of Vermont.

4. At the hearing the petitioner alleged that he is in the process of petitioning the Family Court for custody. The petitioner was advised to reapply for benefits when and if there are any changes in the custodial arrangements with his son.

5. The loss of his son's eligibility as a member of his household resulted in the petitioner's loss of his own VHAP eligibility due to excess income. The petitioner's income is now subject to and in excess of the maximum allowable for a single-person household. However, at the hearing the Department represented that the petitioner is eligible for premium assistance through the Catamount (CHAP) program, which includes "transitional" VHAP coverage. Therefore, it

is unlikely that the petitioner will experience any lapse in medical insurance coverage.

6. The petitioner believes his son has medical insurance through his mother in Canada, but he has been frustrated by the mother's alleged lack of cooperation in informing him of the details of that coverage, and the extent of that coverage when the child is with him in Vermont.

ORDER

The Department's decisions are affirmed.

REASONS

In order to be eligible for Dr. Dynasaur, a child must be a resident of Vermont and meet "ANFC-related" (now RUFA) standards. W.A.M. § M301. The RUFA regulation at W.A.M. § 2242.2 defines an "eligible parent as "an individual who . . . lives in the same household with one or more eligible . . . children." W.A.M. § 2302.1 includes the following provision regarding "residence":

To be eligible for Reach Up, a child must be living with a relative or a qualified caretaker. . . The relative or caretaker responsible for care and supervision of the child shall be a person of sufficient maturity to assume this responsibility adequately. Parents and children living together must be included in the same assistance group.

"Home" is defined by W.A.M. § 2302.13 as follows:

A "home" is defined as the family setting maintained, or in process of being established, in which the relative or caretaker assumes responsibility for care and supervision of the child(ren). However, lack of a physical home (i.e. customary family setting), as in the case of a homeless family is not by itself a basis for disqualification (denial or termination) from eligibility for assistance.

The child(ren) and relative normally share the same household. A home shall be considered to exist, however, as long as the relative is responsible for care and control of the child(ren) during temporary absence of either from the customary family setting.

When there is some question as to where the child's home is for ANFC-related purposes, such as in a joint custody case, the Board has held (and the Vermont Supreme Court has affirmed) that it is the parent that provides the primary "home" for the children who is eligible for ANFC (now RUFA). Fair Hearing No. 5553; Aff'd, Munro-Dorsey v. D.S.W., 144 Vt. 614 (1984). This ruling has been followed in all ANFC-related Medicaid cases as well, including recently-decided Fair Hearing No. M-02/08-66.

As noted above, there is no question in this case that the petitioner's ex-wife has been granted sole physical custody of the child, and that the child, in fact, spends at least, if not more than, half his time in his mother's home in Canada. Unless and until it can be shown that the child is living in the petitioner's home at least 50 percent of the

time and is considered a resident of Vermont, the child cannot categorically qualify for Medicaid with the petitioner as his primary caretaker relative.

For the above reasons the Department's decisions in this matter must be affirmed. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 1000.4D.

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